

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 898 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

G T MISTRI

Versus

G P S C

Appearance:

MS. SEJAL SUTARIA, ADVOCATE FOR MR VH DESAI for Petitioner
Mr.Kamal Mehta, AGP, for Respondents

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 22/06/1999

ORAL JUDGEMENT

This is a petition under Article 226 of the Constitution. The petitioner has challenged the action of Gujarat Public Service Commission in not calling him for oral interview on the ground that he was short in height by 2 cms.

The petitioner was employed as a Senior Clerk in the office of the Director of Transport at the relevant time. The Gujarat Public Service Commission, respondent No.1, had issued an advertisement inviting applications for the post of Assistant Regional Transport Officer, Class II. The petitioner applied for the said post and according to him, he was declared as a successful candidate in the written test held by the respondent No.1. He also received a letter from the respondent No.1 asking him to remain present at the interview for the post in question. According to the petitioner, before the oral test was held, the officer of the respondent No.1 measured the height of the petitioner without any scientific instrument and arbitrarily came to the conclusion that the petitioner did not possess the requisite height and the petitioner was declared to have failed in the physical test. The petitioner was accordingly not allowed to appear in the oral interview. The petitioner has averred that the minimum height required was 162 cms. while he was 163 cms. tall. Though the petitioner has not stated in the petition how short he was found, it is not in dispute that he was found to be 160 cms. tall. According to the petitioner, the said difference of 2 cms. was marginal. According to the petitioner, the post in question was an administrative post and the height of a candidate had no relevance. It appears that the petitioner had made a protest and he was referred to the Civil Surgeon of New Civil Hospital, but the Civil Surgeon also found him short in height. The petitioner alleged that the Civil Surgeon had measured the height of the petitioner with foot and he had not used a scientific instrument. The petitioner thereupon filed the present petition for declaration that the action of the respondent No.1 was illegal, erroneous and bad in law and for direction that the Commission should hold the oral test of the petitioner.

In reply, an affidavit has been filed by the Deputy Secretary, Gujarat Public Service Commission. Along with the reply the copy of the Assistant Regional Transport Officers Recruitment Rules, 1972 made by the Governor under Article 309 of the Constitution has been annexed. Rule 3 sub-rule (iv) provides that a candidate must have a good physique with height not less than 162 cms. and minimum chest deflated 79 cms. Hence the contention of the petitioner that the height of the candidate had no relevance to the post in question cannot be accepted. Whether the height of the petitioner was 160 cms., as measured by the Civil Surgeon, or 163 cms., as asserted by the petitioner, is a disputed question of

fact which cannot be determined in the present proceedings under Article 226 of the Constitution. The petition, therefore, fails and is accordingly dismissed. Rule discharged. No order as to costs.
